

## REMARKS

After entry of the above amendments, the claims pending in the subject application are 15-30 and 32-34. Reconsideration of this application based on the Amendments and Remarks presented herein is respectfully requested.

Support for new claims 32-34 can be found on page 6, lines 25-30. The addition of these three claims does not exceed the total number previously paid for, which is 20.

The shortened statutory period for response expired on August 3, 2006. Accordingly, a Petition for a 1 Month Extension of Time is attached hereto. The Director of the United States Patent and Trademark Office is hereby authorized to charge Deposit Account 03-2455 the necessary extension fees identified in the attached Petition and any other fees necessary for entry of this amendment.

### 35 U.S.C. § 112 REJECTIONS

Claim 31 was rejected under 35 U.S.C. §112, first paragraph. This rejection is moot with the cancellation of claim 31.

### 35 U.S.C. § 103 REJECTIONS

Claims 15-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 5,681,801 to Zocchi in view of United States Patent No. 5,980,877 to Baravetto *et al.* or United States Patent No. 5,948,739 to Inman.

The position of the Patent Office is that the Baravetto '877 and Inman '739 state that guar gum is equivalent to xanthan gum, and that this provides motivation to substitute guar gum for xanthan gum in Zocchi '801. While each gum may be able to suspend materials to a certain degree, they do so by different mechanisms.

Xanthan gum does not suspend solid particles primarily due to the viscosity of the resulting solution. It suspends particles by the network structure that it forms in the composition. Xanthan gum provides a yield stress to the composition to suspend particles. See United States Patent No. 4,155,314 to O'Callaghan *et al.* at column 2, lines 30-40.

Guar gum provides little or no yield stress to a composition. It provides a high viscosity. See United States Patent No. 4,155,314 to O'Callaghan *et al.* at column 2, lines 53-56.

Because xanthan gum and guar gum function by different mechanisms, they are not equivalents in all situations. Xanthan gum and guar gum are each from different genera of materials. While xanthan gum and guar gum can be classified in the family of suspending agents, they are each in a different genus.

Missing from either Baravetto '877 or Inman '739 is a disclosure or suggestion to use xanthan gum and guar gum in combination. Each works by a different mechanism. There is no disclosure or suggestion of selecting the mechanism provided for by xanthan gum and the mechanism provided for by guar gum in combination. The references must point out the combination without the need for picking or choosing.

In order to anticipate a composition when a reference discloses multiple variables and combinations, the reference must describe the composition with enough detail such that the composition is in the possession of the public. *In re Brown*, 329 F. 2d 1006, 1011, 141 U.S.P.Q. 245, 249 (C.C.P.A. 1964). Also, the reference must clearly and unequivocally disclose the composition or direct those skilled in the art to the composition without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the reference. *In re Arkley*, 455 F.2d 586, 587, 172 U.S.P.Q. 524, 526 (C.C.P.A. 1972). Additionally, under the obviousness standard, while it may be obvious to try to vary all parameters or try each of numerous possible choices, the reference must suggest the combination and selection of parameters for the composition. *In re O'Farrell*, 853 F.2d 894, 903, 7 U.S.P.Q.2d 1673, 1681 (Fed. Cir. 1988).

Here, there is no disclosure or suggestion in the references to use xanthan gum in combination with guar gum.

Combining Baravetto '877 or Inman '739 with Zocchi '801 would at most only suggest using one mechanism for suspending materials, but it does not disclose or suggest using two different mechanisms. Because Baravetto '877 or Inman '739 do not disclose the selection of dual mechanisms provided for by xanthan gum and guar gum, there is no motivation to combine Baravetto '877 or Inman '739 with Zocchi '801.

Further there is no disclosure or suggestion in the references of having the amount of xanthan gum greater than the amount of guar gum (claim 23), or the viscosity or flow characteristics in new claims 32-34.

Therefore, it is respectfully submitted that claims 15-30 are patentable over United States Patent No. 5,681,801 to Zocchi in view of United States Patent No. 5,980,877 to Baravetto *et al.* or United States Patent No. 5,948,739 to Inman.

#### **OBVIOUSNESS TYPE DOUBLE PATENTING REJECTIONS**

Claims 15-31 were rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-14 of United States Patent No. 5,681,801 to Zocchi in view of United States Patent No. 5,980,877 to Baravetto *et al.* or United States Patent No. 5,948,739 to Inman.

From above, it was shown that there is no motivation to combine Baravetto '877 or Inman '739 with Zocchi '801 because none of the references disclose the selection of xanthan gum from the genus of materials that suspend by forming a network structure in combination with the selection of guar gum from the genus of materials that imparts viscosity. Because the references do not disclose or suggest the combination, it is respectfully submitted that claims 15-30 are patentable over claims 1-14 of United States Patent No. 5,681,801 to Zocchi in view of United States Patent No. 5,980,877 to Baravetto *et al.* or United States Patent No. 5,948,739 to Inman.

In view of the amendments and remarks contained above, Applicants respectfully request reconsideration of the application, withdrawal of the 35 U.S.C. § 103, § 112, and obviousness type double patenting rejections, and request that a Formal Notice of Allowance be issued for claims 15-30 and 32-34. Should the Examiner have any questions about the above remarks, the undersigned attorney would welcome a telephone call.

Respectfully submitted,  
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Enclosures